

of sale and bidding, the barque would have sold for less than she actually brought. That she subsequently commanded a much better price is conclusively shown to have resulted from a circumstance which could not have been foreseen.

The cases relied upon to show the invalidity of the purchase of this vessel by the defendant, do not, in my opinion, support the proposition for which they are cited. In the case of *Church vs. The Marine Ins. Co.*, 1 *Mason*, 341, the vessel was sold by the master himself at public auction, after she was stranded, and he became the purchaser. There, as said by Mr. Justice Story, nothing could be clearer than that he could not become a purchaser. He was both vendor and vendee. In the case of the *Schooner Tilton*, 5 *Mason*, 465, the same judge, speaking of sales made by a wreck commissioner, and asserting their incapacity to purchase, says, the same principle applies with as much, if not more force to the master, when he acts as the agent of all concerned, under an authority superinduced by an urgent necessity in the course of the voyage. Even after the sale the conduct of the wreck commissioner or the master, in buying from the first purchaser, will be watched with suspicion, and nothing but the most entire good faith, *uberrima fides*, on their part, will save the sale.

And the case of *Chamberlain vs. Harrod*, 5 *Greenleaf*, 420, is merely an affirmance of the admitted principle that the purchase of a ship in a foreign port, by the master, is generally to be considered as made for the benefit of the owners, if they choose so to regard it. The incapacity of the master thus to purchase, arises, say the court, in this last case, "from the relation of trust and confidence which exists between them." But in the case now under consideration, the relation of trust and confidence did not exist. That had been destroyed by the complainant himself, when he thought proper to confide the power to dispose of his interest in the vessel to another. And although it may be said that the defendant was in favor of and even urged the sale, yet there can be no doubt, I think, that Winter & Latimer, the complainant's agents, must be regarded as the parties by whom it was made, and that whatever they